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of the darkness, and whether lights in a passenger coach at the rear of the box cars could or ought to have been seen by them, the evidence is conflicting and uncertain. *Held*, that, on demurrer to the evidence, judgment was properly rendered for the plaintiff. — *Vancè v. Ravenswood etc. Ry. Co.* (W. Va.), 44 S. E. 461.

ACCIDENT INSURANCE—PHYSICAL EXAMINATION—MISCONDUCT OF AGENT—LIABILITY OF INSURER—WEIGHT OF EVIDENCE.—Only a right of examination, as to an injured person entitled to a weekly indemnity under an accident insurance policy, is conferred upon the company issuing the policy, by the following clause contained therein: "Any medical adviser of the company shall be allowed to examine the person or body of the insured in respect to any injury or cause of death in such manner and at such times as he may require."

The relation of master and servant subsists between the company and its medical adviser in the exercise of such right of examination, and the company must answer for injuries resulting from the negligence or misconduct of its agent in the premises.

Though the insured is not bound to submit to such examination, and may refuse at the risk of loss of his indemnity, or of litigation on account of his refusal, he may submit to it without losing his right to exact care and skill in its exercise; and it is no defense to his action that he consented to examination in a particular manner, if he did so in pursuance of a request or demand that it be so made.

Between the physician and the insured, in such case, the law governing the relations of physician and patient does not apply.

Where the injury of the insured is a sprain of the foot, requiring a plaster cast or similar appliance to hold the injured ligaments in place until they heal or regain strength, and the agent, in making the examination, removes, and fails to replace, such appliance, and injury results therefrom, he is guilty of negligence for which his principal must answer in damages.

The court properly refuses an instruction to the effect that the jury, in passing upon the testimony of a party, may take into consideration his situation and interest in the result of the verdict and all the circumstances surrounding him, and give to it only such weight as they may deem it fairly entitled to, when a witness against him is deeply interested in a moral sense, and no such direction as to his testimony is included.—*Tompkins v. Pac. Mut. Life Ins. Co.* (W. Va.), 44 S. E. 439.